

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING, AMENDING,
REPEALING AND RECREATING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal s. NR 10.40(3)(h); amend ss. NR 10.10(1)(b), 10.102(2)(a), 10.13(1)(b)8., 11. and 12.(intro.), 10.25(4)(c) and (d), 10.27(6), 10.40(3)(b) and (f), 12.15(1)(b) and 45.09(2); to repeal and recreate s. NR 10.28(1); and to create ss. NR 10.02(1)(a), 10.07(1)(k), 10.102(2)(a)note and 15.026 relating to hunting and trapping regulation changes.

WM-01-05

Analysis Prepared by the Department of Natural Resources

Statutory Authority and Explanation: Statutes that authorize the promulgation of this rule order include § 23.09(2)(b), 29.014, 29.089(3), 29.091, 29.193(2) and 29.889(2), Stats. These sections grant rule making authority to the department to establish seasons, regulations and bag limits for hunting and trapping that ensure the citizens of the state continued opportunities for good hunting. Additionally, these statutes provide authority for the department to establish refuge areas, manage state owned properties and provide options for landowners dealing with nuisance wildlife. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Statutes Interpreted and Explanation: In promulgating this rule § 1.026(1)(b), 23.09(2)(b), 29.014, 29.089(3), 29.091, 29.193(2) and 29.889(2), Stats., have been as providing the department with the authority to allow landowners to protect their personal property from gray wolves, as well as implement various hunting and trapping regulation changes.

Related Statute or Rule: There are no rules or statutes currently under promulgation that relate to the provisions that are proposed in the administrative rule order.

Plain Language Rule Analysis: The Bureau of Wildlife Management recommends promulgating administrative rules that modify, repeal and create sections of chapters NR 10, 12, 15 and 45 relating to hunting, trapping, agricultural damage and use of public lands. These rule changes are proposed for inclusion on the 2005 Spring Hearing questionnaire. These proposals include:

- Allowing landowners on private land to shoot and kill any gray wolf in the act of attacking domestic animals provided that they report the shooting to the department within 24 hours and turn the carcass in to the Department.
- Prohibiting the tagging, collaring or marking and release of wild animals without the Department's authorization.
- Eliminating the bear hunting "no dog zone" in bear management zone A.
- Creating a subzone in bear management zone C where the use of dogs would be allowed.
- Modifying the bear hunting license application deadline and updating application submission information.
- Creating consistent standards for body-gripping type traps (conibear size restrictions).
- Prohibiting the use of electronic turkey decoys for turkey hunting.
- Establishing a deer hunting season at Kohler-Andrae State Park and correct a drafting error relating to the hunting season at Yellowstone State Park.
- Allowing "Long Term" Class B disabled permit holders to participate in disabled hunts.
- Allowing the hunting of other game species on lands open to disabled hunts.
- Eliminating the requirement for bear hunters to declare their willingness to participate in agricultural damage and nuisance situations and modification of the application deadline.
- Establishing a "no entry wildlife refuge" at the Turtle Valley Wildlife Area.
- Requiring the owner to identify tree stands used on state owned lands and lands under the management of the department.

The objective of these rule changes is to offer deer, bear and disabled hunters more hunting opportunities and to simplify application procedures and regulatory requirements. In addition, these rules include provisions to effectively manage wildlife populations and to assure that hunters and trappers are offered a quality hunting experience.

Federal Regulatory Analysis: Provided state rules and statutes do not relieve individuals from the restrictions, requirements and conditions of Federal statutes and regulations, regulation of hunting and trapping of native species has been delegated to state fish and wildlife agencies. None of the proposed rules exceed the authorities granted the states in 50 CFR 10.

State Regulatory Analysis: These rule changes do not represent policy or significant rule changes that may differ from surrounding states. All surrounding states have regulations and rules in place for the management and recreational use of wild big game, upland, migratory and furbearer species that are established based on needs which often are unique to that state's resources or public desires. Additionally, waterfowl refuges exist in each of the surrounding states.

In regard to trap requirements, Illinois requires that only conibear traps equal to or less than 7 inches on a side if square or 8 inches if round are allowed on dryland, with no efforts to further reduce incidental take of domestics. In Michigan it's illegal to use conibear traps with a greater than 6 inch spread on public lands or commercial forest lands for dryland sets unless the trap is 4 feet or more above the ground or placed in a box or other container that would make it inaccessible to dogs. Minnesota requires that any conibear trap with a jaw spread greater than 7 ½ inches must be as a waterset (their definition of waterset is at least 50% or more underwater. They further regulate any conibear trap greater than 6 ½ inch jaw spread cannot be set within 3 feet of a culvert unless it's totally submersed.

Portable tree stands are regulated in a variety of ways. In Michigan, if you hunt on public land, your tree stand must be portable and your name and address must be affixed in legible English that can be easily read from the ground. In Illinois, tree stands and blinds on certain public lands open to hunting must be portable and must be tagged with the hunter's name, address, and phone number. In Minnesota and Iowa, no such regulations are in place.

Regarding electronic turkey decoys, Illinois, Minnesota and Michigan prohibit the use of electronic turkey decoys. And finally, regarding the use of hounds and bear hunting, Illinois and Iowa do not have bear seasons. Minnesota has a bear population, which is managed primarily through hunting. However, the use of hounds for bear hunting in Minnesota is prohibited. Michigan also allows bear hunting with hounds, however some areas are periodically closed to hunting bear with hounds.

Summary of Factual Data and Analytical Methodologies: A majority of the rule changes included in this order do not deviate from current Department policy on the management of wildlife, hunting and trapping. The deer season proposed for Kohler-Andre State Park is consistent with the seasons established at other parks where hunting is feasible and practical. Deer hunting has and continues to be an effective tool for managing deer populations in our state parks. It also allows for increased use and recreational opportunities for hunters in these parks. Another issue related to state properties is the use of tree stands. It is currently legal to use portable tree stands on state property provided they are removed at the end of hunting hours daily. To assure that the requirement to remove these daily is complied with, the Department is proposing that these devices are marked in a similar way as waterfowl blinds or ice fishing shelters are currently required to be marked. The No-entry wildlife refuge proposed for Turtle Valley will allow for a resting area for waterfowl during the duck hunting season as do other refuges established around the state. The managing of the deer seasons and access to the Apostle Islands for trapping is also consistent with the standards and agreements established at other Federal properties in the state, such as Fort McCoy.

Bear hunting with trailing dogs continues to be an effective method in managing bear populations in the state. In addition, it is a recreational opportunity and hunting method that continues to flourish in this state. Last year the Department removed a "no-dog" hunting area in portions of Lincoln, Langlade and Oneida counties. This year at the request of bear hunters by way of last year's Spring Hearings, we again propose the elimination of the "no-dog" hunting zone which existed in zone B in the western portions of Lincoln county and eastern portions of Taylor and Price counties. Additionally, at the request of bear hunters in far western Wisconsin, by way of another 2004 Spring Hearing advisory question the Department proposes the creation of a subzone in zone C that would allow the use of dogs south of Hwy. 8 in portions of Dunn, St. Croix, Polk, Barron and Chippewa counties.

The Department continues to strive to offer those hunters that are faced with the challenges of a disability opportunities to participate in hunting. This rule package contains two proposals that deviate from past department policies. First, the department has not allowed those with temporary disabilities (Class B) to participate in special hunts that those with permanent disabilities (Class A) and sight disabilities (Class C) can participate in. The department is proposing to lift this restriction to allow more individuals, specifically those that have a longer-term but not a permanent disability, the opportunity to participate in the special deer and turkey hunts for those with a disability. Secondly, it has been a policy that on private lands where disabled hunts are scheduled no other hunting is allowed. This rule change would make it an option for those landowners who host a disabled hunt, to small game or deer hunt on their property.

Finally, Gray wolves have increased dramatically in the last 10 years in the state. The Natural Resources Board approved the Wisconsin Gray Wolf Management Plan in 1999. That plan contains a provision that once gray wolves are removed from both the state and Federal Endangered/Threatened Species lists, the WI DNR will promulgate rules that would grant people the ability to protect their domestic animals from gray wolf attacks on their own property. The Department moved wolves from the Threatened Species list to the Protected Wild Animal list on August 1, 2004. The U.S. Fish & Wildlife Service is in the process of removing wolves from their threatened Species list.

Anticipated Private Sector Costs: These rules, and the legislation that grants the department rule making authority, do not have a significant fiscal effect on the private sector. Additionally, no significant costs are associated with compliance with these rules.

Effects on Small Businesses: These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule.

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Deadline for Comments: April 12, 2005.

Section 1. NR 10.02(1)(a) is created to read:

NR 10.02 (1) (a) *Landowner exemptions.* On private land, the landowner, lessee or occupant of the land may shoot and kill any gray wolf in the act of attacking domestic animals. Shootings shall be reported within 24 hours to a department conservation warden. The carcass of the wolf shall be turned over to the department.

Section 2. NR 10.07(1)(k) is created to read:

NR 10.07(1)(k) Capture and tag, collar or mark and release any game taken from the wild unless issued a permit by the department pursuant to s. NR 19.11, or as authorized by a license issued under s. 169.25, Stats.

Section 3. NR 10.10(1)(b) is amended to read:

NR 10.10(1)(b) *Dogs.* With the aid of dogs, except that dogs may be used for hunting bear during the season established in s. NR 10.01 (3) (g) 1. in that portion of Zones A, A1 ~~and B~~, and C as shown in the following map:



Section 4. NR 10.102(2)(a) and is amended to read:

NR 10.102(2)(a) *Application submittal.* Application for Class A bear licenses shall be on forms provided by the department. ~~Applicants shall indicate their black bear hunting zone preference. Applications shall be postmarked no later than the Friday nearest January 15 deadline date indicated on the form or received by the a department customer service and licensing bureau, 101 South Webster, P.O. Box 7924, Madison, WI 53707 no later than 4:30 p.m. on that Friday each year center location on the deadline date to be considered for selection. The annual deadline may not be sooner than December 1 each year.~~

Section 5. NR 10.102(2)(a) note is created to read:

Note: The department conducts extensive publicity on the application deadlines beginning several months prior to the deadline. Application deadline dates are published in news releases, license outlet handouts, and pertinent regulation pamphlets. Department service center hours may vary by location.

Section 6. NR 10.13(1)(b)8., 11., and 12.(intro.) are amended to read:

NR 10.13(1)(b)8. 'Body-gripping type traps.' a. Set, place, or operate any body-gripping type trap of the conibear type ~~larger than 7" x 7" greater than 42 square inches measured between the outside of the jaws,~~ unless one-half of the set trap is located underwater at all times.

b. Set, place or operate any ~~7" x 7"~~ body-gripping type traps, ~~220 conibear type, trap; as a water set unless one half of the trap is located underwater at all times; greater than 42 square inches, but not greater than 62 square inches measured between the outside of the jaws,~~ as an elevated set unless the trap is placed at least 5 feet above the surface; as a baited and/or scented set in or on the ground unless the trap trigger is within an enclosure that provides openings no greater than 50 square inches for a 7 inch minimum recess; 8 inch height x 10 inch width opening with a 10 inch minimum recess from the enclosure openings; as an unbaited and/or unscented trail set in or on the ground unless the trap is within an enclosure that provides openings no greater than 10 inches in height and 10 inches in width and is recessed a minimum of 15 inches from the enclosure openings; or as a bottom entry enclosure set unless the entire opening of the enclosure is no more than 7 inches above the surface. The measurement to the surface is the distance to the first surface beneath the trap or opening, where the surface is ground, ice, crusted or packed snow or any other hard material. For the purposes of this paragraph, an enclosure means any device that creates a barrier to the trap allowing entry only through designated openings.

11. 'Minimum waterset.' Except when the muskrat or mink season is open, no person may set, place or operate any waterset smaller than 5 1/2" jaw spread for steel jaw traps and ~~6 3/4" x 6 3/4"~~ less than 42 square inches measured between the outside of the jaws for ~~killer~~ body-gripping type traps of the conibear type.

12. 'Trap placement.' (intro.) Set, place or operate any body-gripping type trap of the conibear type greater than ~~6" x 6"~~ 42 square inches measured between the outside of the jaws, any snare or cable restraint regardless of the size of the noose in the following locations:

Section 7. NR 10.25(4)(c) and (d) are amended to read:

NR 10.25(4)(c) With the aid of dogs during the season established in s. NR 10.01(2)(f)1.

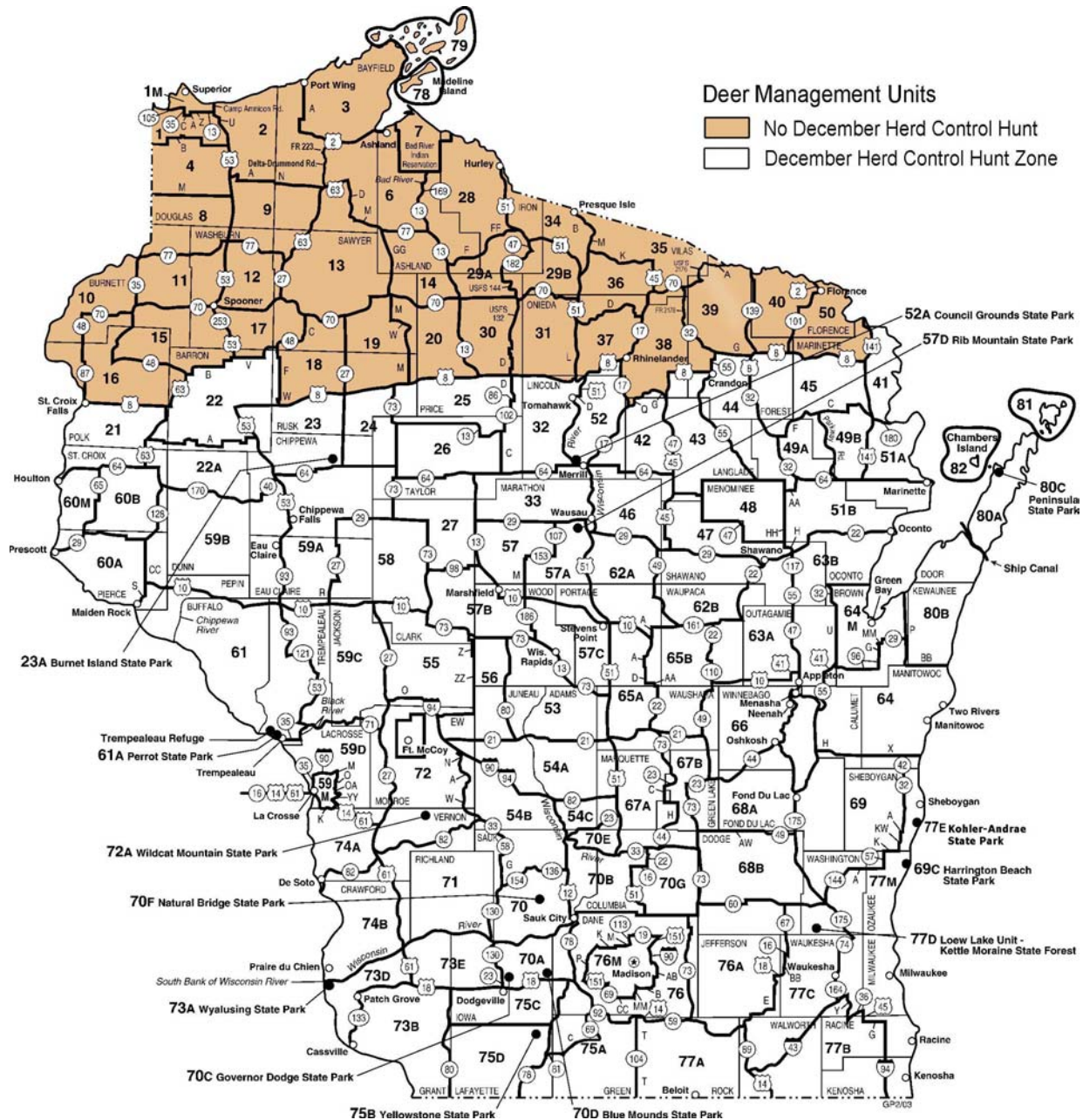
(d) With live or electronic decoys for the purposes of enticing wild turkeys.

Section 8. NR 10.27(6) is amended to read:

NR 10.27 (6) LATE BOW AND MUZZLELOADER SEASON. Deer hunting by bow and arrow is established for the late archery season established in s. NR 10.01 (3) (em) 1. and by muzzleloader during the season established in s. NR 10.01 (3) (e) 3. for Wildcat Mountain, ~~Yellowstone~~, Rib Mountain, Harrington Beach, Kohler-Andrae and Brunet Island state parks. Hunting and the bag limit is authorized by unfilled hunter's choice and antlerless deer permits issued under s. NR 10.104.

Section 9. NR 10.28(1) as amended by CHR-04-091 is repealed and recreated to read:

NR 10.28 (1) STATEWIDE DEER MANAGEMENT UNITS.



Section 10. NR 10.40(3)(b) and (f) are amended to read:

NR 10.40(3)(b) *Participation limits.* No person may participate in more than one special gun deer hunt in the same calendar year and all participants must possess a valid gun deer license and either a valid Class A permit, valid Class B permit issued for more than one year, or Class C permit as defined in s. 29.193 (2), Stats., that was issued on or after August 9, 1989.

(f) *Rule compliance.* Unless otherwise provided by the department, all disabled hunters and accompanying persons shall comply with all hunting rules and laws applicable to the regular gun deer season specified under s. NR 10.01 (3) (e). The bag limit is one deer per hunter's choice and per antlerless deer permit issued under s. NR 10.104, and per special permit issued under s. NR 10.01 (3) (ez) or (et). Other hunters, hunting on the lands described on the application, shall comply with the blaze orange clothing requirements in s. 29.301 (2), Stats., except waterfowl hunters.

Section 11. NR 10.40(3)(h) is repealed.

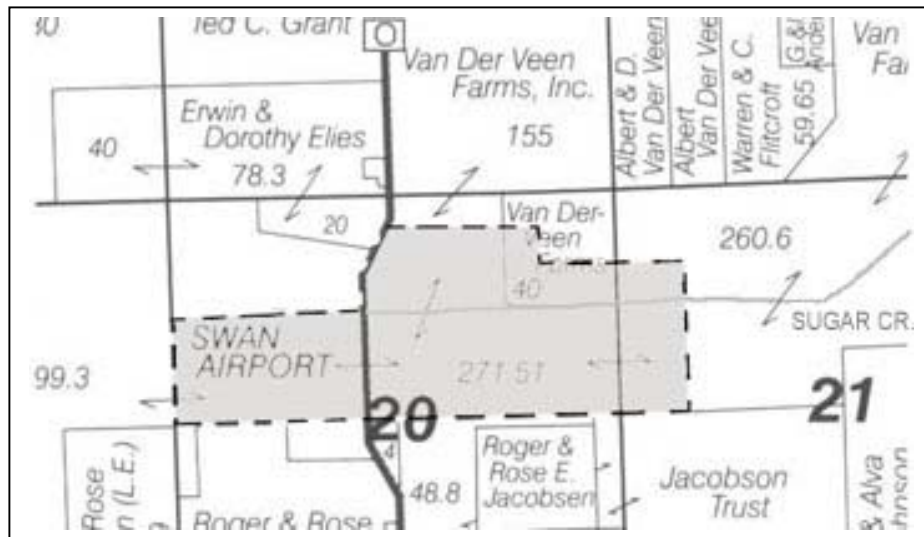
Section 12. NR 12.15(11)(b) is amended to read:

NR 12.15(11) (b) *Bear damage shooting permits.* ~~Participation of others under bear damage shooting permits shall be restricted to those persons who have applied for a Class A or B bear hunting license under application procedures described in s. NR 10.102 (2), and who have indicated on bear hunting license applications their willingness to assist farmers having bear damage problems.~~ Participants shall possess a current valid Class A or B bear hunting license when engaged in bear damage shooting permit activities, such as hunting or baiting.

Section 13. NR 15.026 is created to read:

NR 15.026 No entry wildlife refuge (September 1 – November 30); gun deer and muzzleloader deer hunting permitted. A wildlife refuge is established in the following areas when posted with department signs and no person may hunt waterfowl at any time within the areas. No person may enter the areas for any reason from September 1 through November 30, except to hunt deer during the open gun and muzzleloader seasons for hunting deer established in s. NR 10.01 (3) (e), (es), (et) and (ez).

(1) WALWORTH COUNTY. (a) *Turtle Valley wildlife area.* Township 3 north, range 16 east, town of Sugar Creek.



Section 14. NR 45.09(2) is amended to read:

NR 45.09(2) Except for blinds used exclusively for waterfowl hunting as provided in s. 29.327 (2), Stats., no person may construct, occupy or use any elevated or ground blind or other elevated device except that portable tree stands and blinds may be used provided they are removed from the property each day at the close of hunting hours and tree stands shall have the owner's name and address or department customer identification number, written in the English language and in lettering one-inch square or larger, attached to the tree stand which shall be readily visible on the tree stand and kept legible at all times. No person may cause damage to trees by the placement or erection of portable tree stands or by any other manner while climbing or hunting from a tree. This subsection does not apply to the use of blinds constructed entirely of dead vegetation found on the property.

Section 15. Effective dates. Sections 1 and 2, 4, 5 and 12 shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats. Sections 3, 7 through 11, 13 and 14 shall take effect on February 1, 2006. Section 6 relating to trapping will take effect on April 1, 2006.

Section 16. Board adoption. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on

_____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN__
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)